

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 06-cv-0816

BELLE TIRE DISTRIBUTORS, INC.;
BOLAND TIRE, INC.; BOLAND TIRE OF
BRECKINRIDGE, INC.; BOLAND TIRE OF
THREE RIVERS, INC.;
CADILLAC TIRE CENTER, INC.;
CLEVELAND-CLIFFS IRON CO.;
THE TILDEN MAGNETITE PARTNERSHIP;
THE TILDEN MINING COMPANY L.C.;
THE EMPIRE IRON MINING PARTNERSHIP;
DAFTER LANDFILL, INC.;
DIVISION TIRE AND BATTERY, INC.;
FINE LINE TIRE, INC.;
GINMAN TIRE CO., INC.;
GREEN OAK TIRE, INC.;
HAMLET ENTERPRISES, d/b/a BILL'S AMOCO;
JUNIOR'S DISCOUNT TIRE, INC.;
KEUSCH SUPER SERVICE, INC.;
MILLAR'S OF BAY CITY, INC.,
d/b/a MILLAR'S TIRETOWN;
R & R TIRE AND AUTO SERVICE, INC.;
RALPH'S TIRE & AUTO, INC.,
d/b/a THE TIRE SHOP;
RIVERSIDE TIRE COMPANY;
RTS TRANSPORTATION SYSTEMS, INC.;
SEARS, ROEBUCK & CO.;
SENG TIRE, INC.;
STATEWIDE TIRE OF ST. LOUIS, INC.;
TRIPLE M TIRE, INC.;
TRIPLE M TIRE NORTH, INC.;
UPPER LAKES TIRE DISTRIBUTORS
OF GRAYLING, INC.;
VALLEY RETREADING SERVICE, INC.;
WASTE MANAGEMENT OF WISCONSIN, INC.,
d/b/a METRO RECYCLING AND
DISPOSAL FACILITY;
WASTE REDUCTION SYSTEMS;
WONDERLAND TIRE CO., INC.,

Defendants.

FIRST AMENDED COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this First Amended Complaint and alleges that:

STATEMENT OF THE CASE

1. This is a civil action for recovery of costs brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"). The United States seeks to recover unreimbursed costs incurred for removal activities, including investigations and oversight, undertaken in response to the release or threatened release of hazardous substances at the Carl's Tire Retreading Site ("the Site"), a four-acre site located near Grawn in Grand Traverse County, Michigan. The United States also seeks, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), a declaratory judgment that each Defendant is liable to the United States for all future response costs incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107(a) and 113(b), 42 U.S.C. §§ 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the release or threat of release of hazardous substances giving rise to this claim occurred in this district and because the Site is located in this district.

DEFENDANTS

4. Upon information and belief, each Defendant is a “person who by contract, agreement or otherwise arranged for disposal or treatment . . . of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances,” or is a successor to such person, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. § 9607(a)(3).

5. At times relevant to this First Amended Complaint, each Defendant arranged for the disposal or treatment of tires at the Site that contained one or more of the following hazardous substances or other hazardous substances listed at 40 C.F.R. § 302.4 (App. A): benzene, carbon disulfide, diethanolamine, ethylene thiourea, hydroquinone, methyl ethyl ketone, phenol, p-phenylenediamine, styrene, toluene, 1,1,1-trichloroethane, lead, selenium, cadmium and zinc.

6. Each Defendant is a “person” within the meaning of CERCLA Sections 101(21) and 107(a), 42 U.S.C. §§ 9601(21) and 9607(a).

a. Belle Tire Distributors, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

b. Boland Tire, Inc., Boland Tire of Breckinridge, Inc., and Boland Tire of Three Rivers, Inc. are corporations organized and existing under the laws of Michigan. Each corporation is headquartered in the State of Michigan, and each is licensed to do business in the State of Michigan. Upon information and belief, these three corporations are related in ownership, structure or operation.

c. Cadillac Tire Center, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

d. Cleveland Cliffs Iron Co. Is a corporation organized and existing under the laws of Ohio, is headquartered in the State of Ohio, and is licensed to do business in the State of Michigan.

e. The Tilden Magnetite Partnership; the Tilden Mining Company L.C., and the Empire Iron Mining Partnership are businesses organized and existing under the laws of Michigan, with headquarters in the State of Michigan, and licensed to do business in the State of Michigan.

f. Dafter Landfill, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

g. Division Tire and Battery, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

h. Fine Line Tire, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

i. Ginman Tire Co., Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

j. Green Oak Tire, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

k. Hamlet Enterprises, Inc., d/b/a Bill's Amoco, is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

l. Junior's Discount Tire, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

m. Keusch Super Service, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

n. Millar's of Bay City, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

o. R & R Tire and Auto Service, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

p. Ralph's Tire & Auto, Inc., d/b/a The Tire Shop, is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

q. Riverside Tire Company is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

r. RTS Transportation Systems, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

s. Sears, Roebuck & Co. is a corporation organized and existing under the laws of Delaware, is headquartered in the State of Illinois, and is licensed to do business in the State of Michigan.

t. Seng Tire, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

u. Statewide Tire of St. Louis, Inc. is a corporation organized and existing under the laws of Missouri, is headquartered in the State of Missouri, and is licensed to do business in the State of Michigan.

v. Triple M Tire, Inc. and Triple M Tire North, Inc. are corporations organized and existing under the laws of Michigan, are headquartered in the State of Michigan, and are licensed to do business in the State of Michigan. Upon information and belief, these two Defendants are related in ownership, structure or operation.

w. Upper Lakes Tire Distributors of Grayling, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

x. Valley Retreading Service, Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

y. Waste Management of Wisconsin, Inc. d/b/a Metro Recycling and Disposal Facility, is a corporation organized and existing under the laws of Delaware, and is headquartered in the State of Texas.

z. Waste Reduction Systems is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

aa. Wonderland Tire Co., Inc. is a corporation organized and existing under the laws of Michigan, is headquartered in the State of Michigan, and is licensed to do business in the State of Michigan.

GENERAL ALLEGATIONS

7. The Carl's Tire Retreading Site is an approximately 4.5-acre site located near the town of Grawn in Grand Traverse County, Michigan.

8. The Site consists of a former tire shredding and recycling business known as Carl's Tire Retreading Co. ("Carl's"), that operated between 1993 and 1998. Carl's both received and picked up used and scrap tires from a variety of sources. Customers paid Carl's to dispose of the customers' used tires. The Site received passenger car tires, larger truck tires and oversized industrial tires.

9. On December 29, 1995, a tire shredding machine on the Site overheated or sparked, igniting a pile of shredded rubber and tires. The ensuing blaze destroyed the building housing the machine and engulfed the vast majority of the tires on the Site. Temperatures of 2,400° F were recorded within the fire. The firefighters who responded were unable to control the fire until they buried the flaming tires in 16-foot deep pits on the Site. At the time of the fire,

it is believed that there were over 200,000 whole tires on the Site and a significant quantity of shredded rubber. The fire burned for 23 days.

10. As a result of the fire, a large quantity of pyrolitic oil was released from the tires and shredded rubber at the Site, contaminating soils, surface waters and groundwater. Pyrolitic oil contains benzene, ethylbenzene, styrene, toluene, xylenes, zinc and other hazardous substances listed at 40 C.F.R. § 302.4 (App. A).

11. The hazardous substances in pyrolitic oil are not found in crude oil or are found in concentrations much greater than in crude oil.

12. The Michigan Department of Environmental Quality ("MDEQ") conducted a removal action at the Site in 2002-2003, during which MDEQ discovered a large pool of pyrolitic oil and related contamination in the southwest corner of the Site just above ground water at a depth of 30 feet below original grade. Analytical testing of the pyrolitic oil and groundwater detected various hazardous substances at concentrations above Michigan state regulatory residential cleanup criteria, including: benzene, 4-methyl-2-pentanone, toluene, ethylbenzene, xylene, styrene, 2,4-dimethylphenol, phenanthrene, and benzo(a)anthracene.

13. At the request of MDEQ, EPA conducted an additional removal action at the Site in 2003. EPA disposed of approximately 4,500 gallons of oil and water, 22,910 gallons of treated water, and 10,479 tons of excavated soil. In addition, EPA treated on site a total of 765 cubic yards of contaminated soil and 467,050 gallons of contaminated water.

14. As of the date of the filing of this First Amended Complaint, the costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in "response" to the release or threatened release of hazardous substances at and from the Site total at least \$3,000,000, including the costs of "removal" actions performed or directed by EPA, as those terms are defined in CERCLA Sections 101(23) and 101(25), 42 U.S.C. §§ 9601(23) and (25). The United States will continue to incur response costs at the Site, including administrative and enforcement costs.

15. The Site is a "facility" within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

16. Contaminants identified at the Site, including but not limited to benzene, 4-methyl-2-pentanone, toluene, ethylbenzene, xylene, styrene, 2,4-dimethylphenol, phenanthrene, and benzo(a)anthracene are "hazardous substances" as that term is defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14).

17. There have been "releases," and "threatened releases" of hazardous substances at or from the Site, as those terms are defined in CERCLA Sections 101(29) and 101(22), 42 U.S.C. §§ 9601(29) and (22).

18. Releases and threatened releases at the Site have caused and will cause the United States to incur "response" costs within the meaning of CERCLA Sections 101(25) and 107(a), 42 U.S.C. §§ 9601(25), 9607(a).

19. The response actions taken and the response costs incurred by the United States at the Site are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

20. The United States has not recovered any of its response costs at the Site. Former owners and operators of the Site are believed to have received bankruptcy protection after 1995. Other than Defendants, there are no other known viable potentially responsible parties.

21. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides, in pertinent part:

* * * *

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances,

* * * *

shall be liable for - -

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

* * * *

The amounts recoverable in an action under this section shall include interest on the amounts recovered under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of Title 26

CLAIM FOR RELIEF
(Arrangements for Disposal)

22. Paragraphs 1 through 21 are realleged and incorporated herein.

23. Defendants arranged for the “disposal” or “treatment” of hazardous substances at the Site within the meaning of CERCLA Sections 101(29) and 107(a)(3), 42 U.S.C. §§ 9601(29), 9607(a)(3).

24. Defendants are jointly and severally liable to the United States for all costs of response actions, including enforcement costs, incurred by the United States in connection with the release and threatened release of hazardous substances at the Site.

25. Defendants are jointly and severally liable to the United States pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), for prejudgment interest on the United States’ response costs.

26. Pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), the Court should also enter a declaratory judgment that Defendants are jointly and severally liable to the United States for all future response costs incurred by the United States in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), enter a judgment in favor of the United States and against the Defendants declaring that the Defendants are jointly and severally liable for all response costs incurred by the United States at the Carl’s Tire Retreading Site, including prejudgment interest;

2. Pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), enter a declaratory judgment that the Defendants are jointly and severally liable to the United States for all future response costs incurred by the United States in connection with the Site.

3. Award the United States its costs of bringing this action; and

4. Award such other relief as this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES

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